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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.****Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

WOODDY et al. v. TAYLOR et al.

March 13, 1913.

[77 S. E. 498.]

**1. Wills (§ 155\*)—Undue Influence—Effect.**—Before undue influence can be made ground for setting aside a will, it must be sufficient to destroy free agency on the part of testator.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 375-381; Dec. Dig. § 155.\* 13 Va.-W. Va. Enc. Dig. 498; 14 Va.-W. Va. Enc. Dig. 1038; 15 Va.-W. Va. Enc. Dig. 1022.]

**2. Wills (§ 163\*)—Undue Influence—Burden of Proof.**—The burden is on a party attacking a will for undue influence to prove it.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 388-402; Dec. Dig. § 163.\* 13 Va.-W. Va. Enc. Dig. 394; 14 Va.-W. Va. Enc. Dig. 1040; 15 Va.-W. Va. Enc. Dig. 1022.]

**3. Wills (§ 166\*)—Undue Influence—Sufficiency of Evidence.**—Evidence held insufficient to show that a testator was unduly influenced in making his will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 421-437; Dec. Dig. § 166.\* 13 Va.-W. Va. Enc. Dig. 387; 14 Va.-W. Va. Enc. Dig. 1038; 15 Va.-W. Va. Enc. Dig. 1022.]

**4. Wills (§ 52\*)—Competency of Testator—Age.**—The presumption of competency to make a will is not destroyed by any extremity of age.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 101-110; Dec. Dig. § 52.\* 13 Va.-W. Va. Enc. Dig. 711; 14 Va.-W. Va. Enc. Dig. 1077; 14 Va.-W. Va. Enc. Dig. 1070.]

**5. Wills (§ 55\*)—Mental Capacity—Disease.**—Incompetency to make a will is not established by proving that the mind has been impaired by disease.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 137-158, 161; Dec. Dig. § 55.\* 13 Va.-W. Va. Enc. Dig. 710; 14 Va.-W. Va. Enc. Dig. 1077; 14 Va.-W. Va. Enc. Dig. 1070.]

**6. Wills (§ 50\*)—Mental Capacity—Sufficiency.**—Testator at the time of making his will need not retain all the force of intellect which he may have had at a former period; if he still possesses a mind sufficient to comprehend and advise as to the ordinary transactions

\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

of his life, and to give directions as to how his business and estate shall be managed, he is competent.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 96-100; Dec. Dig. § 50.\* 13 Va.-W. Va. Enc. Dig. 710; 14 Va. W. Va. Enc. Dig. 1077; 15 Va.-W. Va. Enc. Dig. 1070.]

**7. Wills (§ 55\*)—Mental Capacity—Evidence.**—To impeach a will on the ground that testator is incompetent, the incompetency must be clearly proved to exist.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 137-158, 161; Dec. Dig. § 55.\* 13 Va.-W. Va. Enc. Dig. 713; 14 Va.-W. Va. Enc. Dig. 1077; 15 Va.-W. Va. Enc. Dig. 1070.]

**8. Wills (§ 55\*)—Mental Capacity—Sufficiency of Evidence.**—Evidence held insufficient to show that a testator 86 years of age was incompetent to make a will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 137-158, 161; Dec. Dig. § 55.\* 13 Va.-W. Va. Enc. Dig. 713; 14 Va.-W. Va. Enc. Dig. 1077; 15 Va.-W. Va. Enc. Dig. 1070.]

Appeal from Chancery Court of Richmond.

Bill by John P. Woody and another against one Taylor, executor, and others, to set aside a will. From a decree sustaining the will, complainants appeal. Affirmed.

*L. O. Wendenburg*, of Richmond, for appellants.

*A. W. Patterson* and *S. S. P. Patteson*, both of Richmond, for appellees.

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## WRIGHT v. COMMONWEALTH.

March 13, 1913.

[77 S. E. 503.]

**1. Grand Jury (§ 10\*)—Special Grand Jury—Statute.**—Under the express provisions of Code 1904, §§ 3975, 3978, special grand juries may be summoned and impaneled at any regular or special term of the court, when so ordered by the judge.

[Ed. Note.—For other cases, see Grand Jury, Cent. Dig. § 27; Dec. Dig. § 10.\* 6 Va.-W. Va. Enc. Dig. 759.]

**2. Criminal Law (§ 1034\*)—Appeal—Review—Presentation of Questions below.**—Under Code 1904, § 4016, providing that all felony cases shall be tried at the term at which the indictment is found, unless good cause for a continuance is shown, defendant, who offered no evidence in support of his motion therefor, nor made any claim that it would have enabled him to procure any evidence in his defense, and who during his trial did not avail himself of his oppor-

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.